IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1257 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KHARVA DEVJI @ JULI BUDHU

Appearance:

1. Criminal Appeal No. 1257 of 1986

MR AJ DESAI APP for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1-3 (absent)

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 05/04/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-State of Gujarat has challenged in this appeal, the impugned judgment and order of acquittal dated 26.6.1986 passed by the learned Addl. Sessions Judge, Porbandar in Sessions Case No.1 of 1985 whereby the learned Judge acquitted all the respondents-accused for the offences punishable under Sections 307, 307 r/w.S.34 of the IPC and u/S.326, 504 r/w.S.34 of the IPC and 353 r/w.S.34 of the IPC. He has also acquitted the respondents accused for the offence u/S.32(1) r/w.S.135(1) of the Bombay Police Act and Section 25(1A) and 25(1C) of the Indian Arms Act.

#. The respondents-accused were charged for the aforesaid offences for the incident in question, which took place on 1.8.1984 at about 9.45 a.m. in the city of Porbandar near water tank and near Badam Diara. The respondents-accused in furtherance of their common intention to cause death of the complainant-Police Constable-Bhoja Raja, buckle No.938 assaulted the complainant. The respondent-accused No.1-Kharva Devji @Juli Budhu fired gun shot from the tamancha, which caused hurt to the complainant on his both legs and which would have resulted into death of the complainant. Thus, therefore, accused No.1 in his individual capacity committed offence u/S.307 of the IPC. Rest of the respondents-accused Nos.2 and 3 intentionally insulted and annoyed the complainant by uttering filthy abuses in indecent language. At the time of incident, respondent-accused No.2 in furtherance of their common intention in order to cause grievous hurt to complainant threw open knife towards the complaint. The respondent-accused No.3 was simply present.

#. After considering the evidence of the complainant and other witnesses, the learned Trial Judge came to the conclusion that the prosecution failed to prove its case against the respondents-accused beyond reasonable doubt, therefore, by giving them benefit of doubt acquitted all the respondents-accused, which is challenged in this appeal.

#. At the outset, it may be stated that when the appeal was called out for hearing, learned APP, Mr.Desai has produced fax message, which is ordered to be taken on record of the case, received by him from Police Inspector, Mr.M.R.Rathod of Kirtimandir Police Station, Porbandar stating that during the pendency and final disposal of this appeal, respondent-accused No.1-Kharva

Devji @Juli Budhu died on 26.5.1998. In that view of the matter, this appeal qua respondent-accused No.1-Kharva Devji @Juli Budhu stands abated and accordingly it is dismissed as having been abated against respondent-accused No.1.

#. Charge against remaining two accused were not serious in nature, except their mere presence, no overt act was attributed. The prosecution case regarding the respondent-accused No.2 throwing open knife on the complainant was not believed by the learned Judge. For disbelieving the evidence of the prosecution witnesses, the learned Judge has given cogent reasons in his judgment starting from para No.15 onwards. Having carefully gone through the same, we are of the considered opinion that the learned Judge while giving benefit of doubt to the respondent-accused Nos.2 and 3 has not committed any error, which calls for the interference of this court in this acquittal appeal after a period of almost two decades of the incident.

#. In view of the above discussion, this appeal fails and is hereby dismissed. Bail bonds of the respondents-accused stand cancelled.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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